



United States Department of the Interior

OFFICE OF THE SOLICITOR

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May 21, 1999

Julie Murray, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, KS 66101

Site:	Herculaneum Lead
ID #:	MO0006266373
Break:	1.0
Other:	
5/21/99	
4717	

Dear Julie:



The following is the response to your request to identify the interests of the United States Department of the Interior (Department) with respect to the Doe Run Lead Smelter located in Herculaneum, MO. As you know, the Department has trust responsibilities under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and other laws, for natural resources that may be affected by a release or threatened release of hazardous substances from a facility. The Department has reason to believe that there may have been such a release, or threatened release, from the Doe Run Lead Smelter located in Herculaneum, MO. As is set forth more fully in the Draft, Preliminary Screening Level Ecological Risk Assessment report, previously sent to you, as well as the Preliminary Assessment prepared by the Missouri Department of Natural Resources (MDNR), personnel from the Department, as well as the United States Environmental Protection Agency (EPA) have tested aquatic sediments and biological specimens around this facility. The results of these studies indicated that contaminants such as arsenic, cadmium, copper, lead, nickel and zinc are available to fish and wildlife at apparently harmful levels.

The habitats around the lead smelter support a variety of fish and wildlife including migratory birds (red-tailed hawk, belted kingfisher and great blue herons) and endangered species (bald eagle and pallid sturgeon) under the trusteeship of the Department. Furthermore, Mark Twain National Wildlife Refuge lands are located along the Mississippi River downstream of the site. According to the Department's studies, the hazard quotients calculated for lead contamination indicate an increased ecological risk for several pathways predicted at the habitats around the Doe Run Lead Smelter site.

The Department is concerned about these threats to the environment and natural resources under our trusteeship at the site. What is particularly worrisome is that the facility operations of concern are on-going. These operations of concern include, but may not be limited to, storage of solid materials with high metal concentrations in the river flood plain and unregulated storm water discharges off of the solid waste piles.

The Department is currently exploring two of its statutory authorities for addressing these

concerns. First, the Department has the authority, under Section 106 of the CERCLA, to issue administrative orders to seek judicial relief with respect to a release or a threatened release of a hazardous substance affecting natural resources under its trusteeship, that may present an imminent and substantial threat to public health or welfare or the environment. The Department defers to EPA in these matters where EPA has the lead responsibility for conducting oversight of a response action with respect to the release or the threatened release. Thus, whether EPA exercises its authority to act in this matter is pertinent to the interests of, and actions taken by, the Department.

Next, as a natural resource trustee at the site, the Department has the responsibility to seek to restore, replace or acquire equivalent natural resources for losses to natural resources resulting from the release of hazardous materials. Pursuant to the CERCLA, the Department, as well as the State natural resource trustee, may act on behalf of the public to assess damages and bring claims for injury to, destruction of, or loss of natural resources under its jurisdiction. Such resources include land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the trustee.

The applicable statute of limitations for bringing a natural resource damage claim differs for those sites that are designated on the National Priorities List (NPL) and those that are not. For those sites listed on the NPL, an action for natural resource damages must be commenced within three years of the completion of the remedial action. For all other sites, an action must be commenced within three years of the discovery of the loss and its connection with the release in question. (42 U.S.C. §9613(g)(1)). Thus, any decisions affecting MDNR's proposed NPL listing of the Doe Run, Herculaneum Lead Smelter site, greatly impact the rights and abilities of the natural resource trustees.

Finally, any response or remedial activities undertaken on the site will impact the technical aspects of any natural resource restoration case that follows. Thus, in order to ensure that all CERCLA mandates are met regarding the protection of the environment, the Department recommends the formation of a case specific Biological Technical Assistance Group (BTAG). The BTAG's function would be to assist with the collection and evaluation of information needed to assess ecological effects at the site. In addition to offering their technical expertise to the group, participating natural resource trustee representatives could help to ensure that any response or remedial activities undertaken will be consistent with restoration goals wherever possible.

In conclusion, the Department is interested in coordinating environmental enforcement activities at the site with the EPA and the MDNR. This coordinated effort should include legal and case management discussions regarding the potential use of authorities and actions to address the environmental and human health concerns as well as the formation of a BTAG. The Department is pleased that the EPA is examining the environmental concerns at this site as well as its ability to take corrective action. We are looking forward to pursuing and/or supporting, efficient and effective response, remedial and restoration actions at this facility, in a cooperative and integrated fashion, along with our fellow government agencies.

As always, I would be happy to discuss this with you further and offer any assistance I can towards this matter. Please feel free to contact me by telephone at (412) 937-4000 or by e-mail at thomas_shope@ios.doi.gov.

Very truly yours,

A handwritten signature in cursive script, reading "Thomas D. Shope".

Thomas D. Shope
Attorney Advisor

cc: Michael McNulty, Esquire
USDOJ, ENRD